

Report to the House and Senate Ways and Means Committees
Nursing Facility Direct Care Add-On
As Required by Chapter 26 of the Acts of 2003

October 1, 2004

Commonwealth of Massachusetts
Executive Office of Health and Human Services

Division of Health Care Finance and Policy
Paul J. Cote, Jr. Commissioner

Introduction

This report is submitted pursuant to Chapter 26 of the Acts of 2003, the FY04 budget, which required the Division of Health Care Finance and Policy (DHCFP) to report a “preliminary analysis of funds expended” of Direct Care Add-On funds. As part of this report, the budget also requires “a description and timeline for auditing of these funds.”

Background

The FY03 budget directed the DHCFP to begin implementation of a User Fee on all non-Medicare nursing facility patient days to leverage federal Medicaid matching funds and increase MassHealth nursing facility payment rates accordingly. Regulation 114.5 CMR 12.00 implements the nursing facility payment liability of this User Fee. Regulation 114.2 CMR 6.00 implements the required MassHealth nursing facility payment increases resulting from the use of these funds.

Legislative Requirements

Each year since FY03, the budget has dedicated \$50 million of the MassHealth User Fee payment increases for the Direct Care Add-On. The legislation requires that these funds be used by nursing facilities in the following areas:

- Increasing wages, hours and benefits of direct care staff,
- Increasing the facility’s staff-to-patient ratio, and
- Demonstrably improving the facility’s recruitment and retention of nursing staff to provide quality care.

The DHCFP is directed to audit facilities to determine compliance with these requirements, and to reflect the following specific legislative directives:

- Credit facility nursing spending that is higher than the median nursing cost per minute used to calculate the statewide standard nursing component of nursing facility Medicaid payment rates,
- Include temporary nursing agency costs as “direct care costs,”
- Credit wage increases that are “over and above” previously collectively bargained for wage increases,” and
- Adjust spending compliance tests to “reflect any Medicaid nursing facility payment reductions, including, but not limited to, rate reductions imposed on or after October 1, 2002.”

DHCFP Compliance Program

The DHCFP established a program to measure compliance with the legislative spending requirements described above. The DHCFP provided facilities with detailed schedules and instructions that calculated whether they passed four separate tests:

1. Nursing costs in excess of the median,
2. Increasing wages and benefits,
3. Increasing staff-to-patient ratio, and
4. Improved recruitment and retention.

The DHCFP determines final compliance for each nursing facility as the higher-of the following amounts:

- The sum of [Test 1 (Nursing costs in excess of the median) + Test 4 (Improved recruitment and retention)]
- or -
- The sum of [Test 2 (Increasing wages and benefits) + Test 3 (Increasing staff-to-patient ratio) + Test 4 (Improved recruitment and retention)]

The DHCFP constructed final compliance in this manner so that Direct Care Add-On spending by facilities was not double-counted. Facilities that chose to file their data electronically were required to submit their data by August 31, 2004, while those that chose to submit paper worksheets had an August 16, 2004 deadline.

In September, the DHCFP released a one-time compliance program for facilities that self-report that they have failed to spend the Direct Care Add-On funds according to the regulatory requirements. This one-time action provides nursing facilities with a final opportunity to pay out direct care staff increases as required by state law, and avoid a recovery and penalty payment to the Commonwealth. This compliance program and an explanation of how the compliance tests reflect rate reductions imposed on or after October 1, 2002 were outlined in an Administrative Bulletin sent to nursing facilities in September¹.

Preliminary Analysis

Summary Statistics

The following summarizes our preliminary results based on data self-reported by nursing facilities²:

¹ Administrative Bulletin 04-06: Nursing Facility Direct Care Compliance Revisions
http://www.mass.gov/dhcfp/pages/pdf/bull_nf.pdf

² Data as of September 16, 2004.

| I. Number of Facilities | |
|--|------------------|
| 1. Number of Facilities Filing Electronically | 374 ³ |
| 2. Number of Facilities Filing On Paper | 23 ⁴ |
| 3. Number of Non-Filing Facilities | 50 |
| 4. Number of Facilities with Level IV Beds Excluded from Analysis (see footnote 3) | 17 |
| 5. Total Number of Facilities Expected to File Data | 464 |

| II. Direct Care Add-On Funding | |
|--|-----------|
| 1. Average Annual Direct Care Add-On Funding | \$116,159 |
| 2. Average Direct Care Add-On Per Diem | \$4.32 |

| III. Facilities in Compliance with Requirements | |
|--|--------------|
| 1. Total Number of Facilities in Compliance | 356 |
| 2. Number of Facilities in Compliance (Test 1 + Test 4) <ul style="list-style-type: none"> • Test 1: Nursing costs in excess of the median, plus • Test 4: Improved recruitment and retention. | 160 |
| 3. Number of Facilities in Compliance (Test 2 + Test 3 + Test 4) <ul style="list-style-type: none"> • Test 2: Increasing wages and benefits, plus • Test 3: Increasing staff-to-patient ratio, plus • Test 4: Improved recruitment and retention. | 195 |
| 4. Number of Facilities in Compliance Equally with Both Groups of Tests | 1 |
| 5. Total Amount of Funding in Compliance | \$41,542,376 |
| 6. Average Funding Amount For Facilities in Compliance | \$116,692 |

| IV. Facilities Out of Compliance with Requirements | |
|--|-----------|
| 1. Number of Facilities Not in Compliance | 18 |
| 2. Total Amount of Funding Not in Compliance (w/out 50% penalty) | \$963,158 |
| 3. Average Funding Amount for Facilities Not in Compliance | \$53,509 |

The following summarizes the use of Direct Care Add-On funds. To calculate these amounts, the DHCFP allocated each facility's annual Direct Care Add-On funding proportionally to their reported compliance amounts for each test.

³ This number excludes 17 facilities with residential care (also known as "level IV") beds that have been excluded from the analysis in this preliminary report. The data for these facilities has been excluded because it will need to be further evaluated and adjusted since their residential care beds do not receive Direct Care Add-On funding.

⁴ The data for these facilities are not reflected in the analysis in this preliminary report due to the fact that their data was submitted on paper and was not yet included in the DHCFP's electronic database.

| Use of Funds | Add-On \$ | % of Total |
|---|------------------|-------------------|
| Test 1: Nursing Costs in Excess of the Median | \$19.94 m | 48% |
| Test 2: Increasing Wages and Benefits | \$12.45 m | 30% |
| Test 3: Increasing Staff-To-Patient Ratio | \$ 8.81 m | 21% |
| Test 4: Improved Retention and Recruitment | \$ 0.34 m | 1% |
| Total Reported by Facilities in Compliance | \$41.54 m | 100% |

Data Discrepancy

The DHCFP has determined that one data element reported by nursing facilities, the average number of management minutes, did not match MassHealth data for the same time period. This data is used in calculating and comparing whether a facility's nursing costs were above the statewide standard amount. This discrepancy has a "material" impact--defined as affecting whether a facility is in compliance or not, or affecting the level of a recovery payment--on only seven facilities that submitted data. The DHCFP is contacting these seven facilities to reconcile the discrepancies.

Next Steps

The DHCFP will be collecting data from facilities that report that they will be out of compliance with the spending requirements and therefore intend on making a bonus under the one-time Compliance Program described above. Facilities must inform the DHCFP of this intent by October 15, 2004, issue the bonuses to their direct care workers by November 1, 2004, and provide the DHCFP with supporting documentation by November 5, 2004.

The DHCFP will then continue to examine the reported compliance data, incorporating any bonuses made under the one-time Compliance Program. This examination will include further desk reviews, targeted field audits, and reviewing actual payroll data. The DHCFP plans on beginning field audits in December 2004, with a target completion date of early 2005. The DHCFP should have a final analysis completed by spring 2005.